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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 EDDIE DUNBAR,
12 aka ALAMIN SAMAD,

13 Petitioner,

No. CIV S-04-1176 GEB PAN P

14 vs.

15 A. K. SCRIBNER, et al.,

ORDER

16 Respondents.

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17 On June 28, 2005, the court dismissed this action as time-
18 barred and denied petitioner's motions for summary judgment and
19 the clerk of the court duly entered judgment. Petitioner moves
20 to amend the judgment to reflect consideration of his October 27,
21 2004, motion for an evidentiary hearing.

22 Pursuant to Fed. R. Civ. P. 60(a):

23 Clerical mistakes in judgments, orders or other parts
24 of the record and errors therein arising from oversight
25 or omission may be corrected by the court at any time
26 after such notice, if any, as the court orders. During
the pendency of an appeal, such mistakes may be so
corrected before the appeal is docketed in the

1 appellate court, and thereafter while the appeal is
2 pending my be so corrected with leave of the appellate
3 court.

4 Through clerical oversight, the court did not mention the
5 motion for an evidentiary hearing. Accordingly, plaintiff's July
6 21, 2005, motion is granted and the order and judgment entered
7 June 28, 2005, are vacated.

8 The court hereby orders the following:

9 1. The findings and recommendations filed June 2, 2005, are
10 adopted in full;

11 2. Respondents' October 7, 2004, motion to dismiss is
12 granted;

13 3. Petitioner's October 27, 2004, motion for an evidentiary
14 hearing and for summary judgment is denied;

15 4. Petitioner's December 1, 2004, motion for summary
16 judgment is denied;

17 5. This action is dismissed as untimely.

18 So ordered.

19 Dated: August 15, 2005

20 /s/ Garland E. Burrell, Jr.
21 GARLAND E. BURRELL, JR.
22 United States District Judge
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